

No. 82-1226

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ALEXANDER L. STEVAS,
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IN THE
Supreme Court of the United States

October Term, 1982

FRANK J. LAIRD,

Petitioner

v.

**INTERSTATE COMMERCE COMMISSION,
UNITED STATES OF AMERICA, and
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,**
Respondents

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Third Circuit**

**BRIEF FOR RESPONDENT
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY IN OPPOSITION**

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Third Circuit was correct in affirming the Interstate Commerce Commission's approval of Respondent Railway's stock reissuance, since the transaction was for a lawful object within the Railway's corporate purpose and reasonably appropriate for that purpose as determined under a federal standard which considers the corporation law of the state where a carrier is incorporated.

2. Whether the Court of Appeals correctly found that the Commission did not abuse its discretion in not granting Petitioner's full request for discovery and in denying his request for an oral hearing under the Commission's Modified Procedure.

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OPINIONS BELOW

The Decision and Order of the Interstate Commerce Commission (the "Commission") dated February 2, 1982 (service date February 8, 1982) is attached to the Petition for Writ of Certiorari as Appendix "A". The Opinion and Judgment of the United States Court of Appeals for the Third Circuit is reported at 691 F. 2d 147 (3d Cir. 1982) and is attached to the Petition as Appendix "B".

STATUTES AND REGULATIONS INVOLVED

This case involves Section 11301(d)(1) of the Interstate Commerce Act (Recodified), 49 U. S. C. § 11301 (d)(1), certain Rules of Practice of the Commission providing for a Modified Procedure, namely 49 C. F. R. §§ 1100.43, 1100.51 and 1100.55(a), and a section of The General and Business Corporation Law of Missouri, Mo. Ann. Stat. § 351.390 (Vernon), which are set forth in the Appendix hereto.

STATEMENT OF THE CASE

1. The Transaction

Respondent, The Kansas City Southern Railway Company (the "Railway"), a Missouri corporation¹ and intervenor in the Court below, reissued its common and preferred stock to effect a reverse stock split on March 10, 1982 as authorized by the Commission following a proceeding under 49 U. S. C. § 11301(d)(1). (A1).²

The transaction involved the exchange of one new share of preferred stock for each 7,000 shares of preferred stock outstanding and one new share of common stock for each 2,000 shares of common stock outstanding. (A12). Fractional share holdings were purchased by the Railway at \$30 per share for the preferred and \$210 per share for the common. *Id.*

Prior to the transaction, KCSI owned 98% of the Railway's preferred stock and 99% of its common stock. *Id.* All of the other seventy holders of preferred shares and all but one of the twenty-eight other holders of common shares accepted cash in exchange for their shares at the aforementioned rates. The petitioner, Frank J. Laird ("Laird"), who owned 1,069 shares of common stock, alone has not accepted payment.³

1. The Railway is presently a wholly owned subsidiary of Kansas City Southern Industries, Inc. ("KCSI"). All other subsidiaries of KCSI are also wholly owned.

2. The reference "Jt. App. —a" is to the Joint Appendix filed in the Court of Appeals. The reference "A—" is to the Appendix to the Petition. The reference "Pet. —" is to the Petition itself.

3. Thus, Laird's statement that other common and preferred shareholders who objected to the transaction before the Commission (of which there were two) "have no present interest in selling their shares for any price" (Pet. 3-4) is accurate only because they have already been paid for those shares. Further, the suggestion that such other individuals contend that the Railway sought to defraud its minority shareholders is baseless and irrele-

2. Proceedings Before the Commission

On February 26, 1981, the Railway applied to the Commission for the necessary authority to make the stock reissuance. (A1). Laird filed a protest to the Application. (A13). The Commission considered the Application pursuant to its modified procedure (A1),⁴ which requires parties to submit verified statements of fact to the Commission and to seek Commission approval of discovery in sufficient time to allow replies and to avoid the postponement of any established dates for the filing of such statements. (A23-A24).⁵

The Railway filed its Verified Statement within the thirty days set by the Commission's Modified Procedure Order. (Jt. App. 109a). Thereafter, and ten days prior to the date specified by the Order for the filing of his Verified Statement, Laird petitioned for a modification of the Order to permit extensive discovery⁶ of the Railway, its valuation experts, Kidder, Peabody & Co. ("Kidder"), and KCSI and to permit him to file a supplemental and more detailed Verified Statement after discovery. (Jt. App. 130a). Although Laird's request was not timely (A40), the Commission waived the timeliness requirement (A40-A41), and authorized discovery in several areas. (A43). Specifically, the Commission authorized the production of documents from Kidder, permitted interrogatories of R. S. Trenkman, Vice President of Kidder, and extended the time for the filing of Laird's Verified Statement and the Railway's Reply thereto. *Id.*

3. (Cont'd.)

vant, since they accepted payment and did not seek review of the Commission's Decision.

4. See 49 C. F. R. § 1100.43.

5. See *id.* at § 1100.55(a).

6. The request encompassed depositions of five witnesses and production of a multitude of documents in several areas for a five year period. (A24-A25, A41-A42).

Thereafter, Laird filed a Petition (Jt. App. 183a), for a further extension of time within which to file his Verified Statement, which Petition was also granted by the Commission. (Jt. App. 188a). Extensive written Interrogatories addressed to Mr. Trenkman were filed (Jt. App. 189a), and answered. (Jt. App. 207a). Subsequently, Laird filed his Verified Statement (Jt. App. 215a), and the Railway filed a reply thereto. (Jt. App. 267a).

The matter was then ripe for a decision; however, Laird petitioned the Commission for permission to file a "Counter-Reply" and submitted the proposed pleading with his Petition. (A2). This document was also accepted by the Commission. *Id.* Prior to rendering its final Decision on the Railway's Application, the Commission wrote to the Railway requesting certain further documentation (Jt. App. 314a), which materials were furnished. (Jt. App. 315a).

In a carefully considered Decision (A1), the Commission found that the proposed transaction met the requirements of 49 U. S. C. § 11301(d)(1)(A), in that the issuance of the securities was "for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose." (A6). Specifically, the Commission first found that the elimination of the cost of maintaining a stockholders' support system was such a lawful object. *Id.* Secondly, avoidance of a possible conflict of interest between KCSI and the minority stockholders was found to be a proper corporate purpose. *Id.*

Additionally, the Commission, relying on several of its prior decisions and those of this and other courts, found that the compensation tendered to the minority interests was adequate. *Id.* The Commission accepted the expert report of Kidder and the fair market value of each class of stock was found to be properly calculated and reasonable. (A6-A7).

The only evidence submitted to the Commission by Laird on the valid business purpose and compensation issues were statements of his own personal opinion. (A7, A25-A26). He submitted no expert evidence whatsoever in support of his position or to rebut the Kidder conclusions. *Id.*⁷

The Commission specifically found that the proposed issuance of 507 shares of common stock and 60 shares of preferred stock by the Railway: (a) was for a lawful object within the corporate purpose of the Railway and reasonably appropriate for those purposes; (b) was compatible with the public interest; (c) was appropriate for and consistent with the proper performance by the Railway of service to the public as a common carrier; and (d) would not impair the financial ability of the Railway to provide the service. (A8). All the requirements of 49 U. S. C. § 11301(d)(1) were thus met by the proposal.

The Commission's Decision was reached on February 2, 1982 (A1), and served on February 8, 1982. (Jt. App. 345a). The Commission's Order was made effective thirty (30) days after the service date. (A9). A Petition

7. Appendix F to the Petition (A45), a stockbroker's recommendation as to KCSI's stock, should be totally disregarded, since the document was never part of the record before the Commission. See *McClellan v. Carland*, 217 U. S. 268, 282-283 (1910). Indeed, Appendix F is dated August 19, 1982, more than six months after the Commission's Decision and over five months after the transaction which is the subject of the present Petition was effected. Additionally, a stockbroker's unverified opinion as to a railroad's parent's stock, expressed for its own business purposes and not as a qualified expert witness, clearly would have been inadmissible before the Commission on several grounds. By *now* proffering such material, Laird effectively acknowledges his failure to present any expert or substantive evidence below. Moreover, he can hardly be heard to complain about the efficacy of the Kidder valuation report, nor can he properly complain about limits on *his* rights to discovery.

for Stay was filed by Laird with the Commission on February 25, 1982 and denied by the Commission on March 11, 1982.

3. Proceedings Before the Court of Appeals

Laird filed a Petition for Review in the court below on February 25, 1982 (Jt. App. 352a), but did not seek a stay of the effective date of the Commission Order from that court. Accordingly, the Railway effected the transaction on March 10, 1982. The Railway was granted leave to intervene in the court of appeals proceedings on March 26, 1982. (A14).

After oral argument on September 28, 1982, the court below filed its Decision on October 14, 1982 denying Laird's Petition for Review. (A14). The Court of Appeals unanimously found there was substantial evidence in the record as a whole to support the Commission's findings that the transaction was for a proper corporate purpose (A16), and that adequate compensation was offered by the Railway for fractional shares (A18).⁸ The court also found that the Commission selected the proper legal precepts to determine if the proposed transaction was for a lawful corporate object. (A23). Finally, the court found that the Commission "did not abuse its discretion in determining that disputed issues could be resolved on the basis of the verified statements of the parties and that an oral hearing was unnecessary." (A26).

Laird filed a Petition seeking Rehearing before the court of appeals *en banc* on October 28, 1982, which was denied on November 24, 1982. (Pet. 2). He subsequently filed his Petition for Writ of Certiorari on January 21, 1983.

8. Laird apparently is no longer contesting that the Commission's finding as to the compensation for fractional shares was supported by substantial evidence, since no such issue is fairly included within the Questions Presented as set forth in the Petition. (Pet. i).

SUMMARY OF ARGUMENT

The Decision of the Court of Appeals should not be reviewed, since that court properly upheld the federal standard applied by the Commission which considered Missouri corporation law in determining that the Railway's stock reissuance was for a lawful object within its corporate purpose and was reasonably appropriate for that purpose under 49 U. S. C. § 11301(d)(1). This Court should continue to refrain from promulgating federal corporation law and there is no precedent for the test proposed by Petitioner.

The Court of Appeals concluded, after a comprehensive review of the record, that the Commission's findings as to lawful object were supported by substantial evidence. This court does not and should not review such conclusions. Additionally, the Petitioner submitted no substantive or expert evidence that the transaction was not for a lawful object.

The Petitioner's continued challenges to the Commission's procedural handling of the case also present no important federal question warranting review. The court of appeals fully reviewed the record and correctly found that the Commission did not abuse its discretion in not granting Petitioner all the extensive discovery he requested or in not granting him an oral hearing.

REASONS FOR DENYING THE WRIT

- 1. The Court Below Properly Affirmed the Commission's Approval of the Stock Reissuance, Since the Commission Applied the Proper Legal Standards and Laird Presented No Expert or Substantive Evidence That the Transaction Was Not for a Lawful Object Within the Railway's Corporate Purpose.**

The Petition fails to delineate clearly what special and important reasons Laird contends warrant review on writ of certiorari of the Decision of the court below. However, he appears to desire this Court to establish a new and unique federal corporation law standard to be applied by the Commission in determining whether a railroad's proposed securities issuance "is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose" under 49 U. S. C. § 11301 (d)(1)(A).

Laird provides no basis for this Court to consider promulgating such a standard, which would wholly disregard the state of incorporation of the railroad involved as well as this Court's precedents against establishing separate principles of federal corporate law. Additionally, the Petition provides no basis to believe that the federal standard which is proposed is even the law of any jurisdiction. Also fatal to Laird's position is the Commission's express finding that the transaction was for purposes which would benefit the Railway as a whole (A6), which finding the court of appeals concluded was supported by substantial evidence. (A16).

- a. The Court of Appeals Correctly Analyzed the Law Applicable to Commission Review of the Transaction.**

There is no dispute that the Commission has plenary and exclusive authority to review proposed securities issu-

ances by regulated railroads. *Schwabacher v. United States*, 334 U. S. 182, 197 (1948). However, as the court below correctly recognized, there is no general federal corporation law for the Commission to look to in reviewing such transactions under Section 11301(d)(1)(A) of the Interstate Commerce Act. (A21). The court of appeals comprehensively analyzed the Commission's use of Missouri law in determining whether the transaction was for a lawful object within the Railway's corporate purpose and concluded that reference to the law of a carrier's state of incorporation constituted formulation of a proper and consistent *federal* standard for testing such a transaction's legality under the Act. (A22).

Laird proffers no reason why the court of appeals' analysis is not wholly accurate and sensible. The Petition cites no precedent of this Court or any court of appeals applying or recommending a federal corporate standard applicable across the board to regulated carriers or any other class of corporations. Instead, almost sole reliance is placed by him on decisions of the court below and of Delaware courts applying Delaware or Pennsylvania corporate law. (Pet. 13-14). This is done without any explanation as to why those states' laws are relevant to railroad regulation or a stock issuance by a Missouri corporation. They simply are not relevant.

The court below rejected Laird's reliance on its own prior cases, including *Dower v. Mosser Industries*, 648 F. 2d 183 (3d Cir. 1981), and *Coleman v. Taub*, 638 F. 2d 628 (3d Cir. 1981), because they were not construed properly by him. (A19). *Dower* recognized that a cash out of minority shareholders is permitted under Pennsylvania law and that such a transaction may not be enjoined in the absence of some fundamental unfairness. 648 F. 2d at 190. (A19). Laird presented no evidence of any unfairness in the instant transaction. The Commission

found that "[n]o fraud or gross unfairness is being imposed on the minority interests by their elimination." (A7).

The lower court also observed that, under *Coleman*, which construed Delaware law, a cash out is proper where there is a business purpose and that such a purpose related solely to the interest of majority shareholders is sufficient. *Id.* Here, the Commission found that there were valid general corporate purposes for the transaction and Laird never submitted any evidence to suggest that it was solely designed to aid KCSI. Even if he had presented such a case, Delaware law is of no assistance to him under *Coleman*. A court of appeals' interpretations of its own prior decisions should be accorded great weight.⁹ Laird can hardly base his argument in favor of his proposed nationwide federal standard on Pennsylvania and Delaware law since the laws of those states are not supportive of such a standard.

b. This Court Should Continue to Refrain From Creating Federal Corporate Law.

Further, as the Court of Appeals observed (A21), this Court has in the past declined to create a general federal standard of fraud to govern the fiduciary relationship between majority and minority shareholders. See *Santa Fe Industries, Inc. v. Green*, 430 U. S. 462, 478-479 (1977), where this Court expressed a reluctance to federalize securities laws applicable to corporations "absent a clear indication of congressional intent," Questions

9. Laird implies (Pet. 14), that judges of the Court of Appeals who did not participate in the present Decision would support his position. However, he ignores that he filed a Petition for Rehearing En Banc in that court which was denied. (Pet. 2). Such Petitions are reviewed by all active judges of that court. See 28 U. S. C. § 46(c) and 3d Cir. Int. Op. Proc. IXB2. In fact, draft panel opinions are circulated to non-panel active judges and they may also request *en banc* consideration at that juncture. See 3d Cir. Int. Op. Proc. VC5.

as to the validity of corporate transactions have traditionally been governed by the law of the state of incorporation and it was entirely proper for the Commission to base its federal standard on such law. (A22). Moreover, to reiterate, Laird provides no rationale for establishing a nationwide federal rule, let alone his rule. In reality, the Commission's approach is a wise one, since railroad corporations would be treated as any other corporation of a given state (unless application of other provisions of Section 11301(d)(1) peculiarly relating to carriers leads to disapproval of a given transaction).

c. This Court Should Not Review the Lower Court's Conclusions That the Commission's Findings Were Supported by Substantial Evidence.

The writ should also be denied, since given the Commission's findings, the transaction would have properly been approved, even if Laird's new federal standard were adopted by this Court. Laird's test would apparently require a showing that the overall interest of a railroad would be benefited as a consequence of the elimination of minority shareholders through tendering them cash for their securities. (Pet. i). The Commission expressly found that the elimination of the cost of maintaining a stockholder support system "is a benefit which will inure to the applicant and thus is a reasonable corporate purpose." (A6). The Commission also recognized the benefit to be derived to the Railway through the avoidance of possible conflicts of interest between the parent and minority stockholders and that this is true even if no such conflict has occurred previously. *Id.* Additionally, as the Railway argued before the Commission, the transaction would have the added corporate benefit of simplifying its equity ownership so as to facilitate the planning, negotiating and implementing of corporate transactions such as mergers or reorganizations. (A16).

The court of appeals expressly found that there was substantial evidence in the record as a whole to support the Commission's findings. (A16). The court could find no authority and, indeed, none exists to support Laird's contention that anything more than minimal corporate savings must be shown in order for a transaction to be deemed a proper corporate purpose or that actual conflicts of interest must be shown. *Id.*

Since both the Commission and the court below fully considered Laird's arguments as to the proof presented on the question of benefit to the corporation and recognized such benefit, a further review of the same subjects by this Court is not warranted. See *National Labor Relations Board v. Pittsburgh Steamship Company*, 340 U. S. 499, 502-503 (1951). Moreover, Laird's insinuations of wrongdoing or fraud by the Railway (Pet. 4 and 17) are totally without any foundation whatsoever in the record and should be disregarded. Criticism made by him of the Railway's dividend policy or prior tender offer are merely his personal opinion and no effort was made by him before the Commission to substantiate such charges through expert or any other evidence.

In sum, no basis exists for this Court to consider reviewing this case and promulgating a new and special federal standard for Commission review of railroad stock issuances and this is particularly true, given that Laird could not prevail even under the standard he proposes.

d. The Transaction Is Permitted Under Missouri Corporation Law.

Finally, Laird rather belatedly argues that the transactions would be prohibited under Missouri law. (Pet. 16-17). He points to no statutory or decisional law supporting his position other than that relating to appraisal rights available under the Missouri short-form merger statute. Mo. Ann. Stat. § 351.447 (Vernon). However,

the present transaction is obviously not a merger in any form and, accordingly, his authorities have no applicability.

In fact, this transaction does fully comply with Missouri law. Missouri corporation law specifically authorizes the purchase of shares for the purpose of eliminating fractions. Mo. Ann. Stat. § 351.390 (Vernon). The only procedural requirement is the filing of an appropriate amendment to the Articles of Incorporation, which was accomplished by the Railway on the date the Commission Order became effective.

There are no Missouri decisions directly on point, but *Teschner v. Chicago Title and Trust Company*, 59 Ill. 2d 452, 322 N. E. 2d 54 (1974), construes an Illinois statute which was the model for the Missouri corporation law. Therein, the court discussed the legal basis for the elimination of a minority interest through a reverse stock split, observing: "It can be said in general that unless there is fraud which would entitle dissenting shareholders to other relief, interests of minority shareholders can be terminated." 322 N. E. 2d at 56. To reiterate, there is no evidence of fraud in this case.

There is, thus, no serious question that the Commission properly applied Missouri law as the federal standard in this case. (A8). Accordingly, the Petition should be denied.

2. No Important Federal Question Is Presented Warranting This Court's Review, Where the Court Below Fully Reviewed the Record and Correctly Found That the Commission Did Not Abuse Its Discretion in Its Procedural Decisions.

Laird also contends that this Court should review anew the procedural decisions of the Commission concerning the scope of discovery and the need for an oral hearing, despite the fact that the court below meticulously

analyzed and rejected his arguments, concluding that the Commission did not abuse its discretion in any of its procedural rulings. The Commission's handling of procedural matters was eminently fair and justified, particularly in light of Laird's failure to substantiate any need for the broad discovery sought or for a hearing. Moreover, no special or important federal question is posed by such procedural issues in this case so as to warrant granting of the writ.

This Court has held that formulation of administrative procedures is a matter left to the discretion of the administrative agency. *Vermont Yankee Nuclear Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 523, 25 (1978). Laird does not dispute that the Commission's "modified procedure" rules (49 C. F. R. § 1100.43 *et seq.*) have been upheld (*See e.g. Crete Carrier Corp v. United States*, 577 F. 2d 49 (8th Cir. 1978)), or that an administrative agency is not required to hold an adversarial hearing before resolving a dispute. *Titusville Cable TV, Inc. v. United States*, 404 F. 2d 1187, 1192 (3d Cir. 1968). Rather, Laird's only complaint is that the Commission improperly exercised its discretion in its procedural decisions under its own Rules in this case.

To repeat, such contentions have already been comprehensively addressed. Both the Commission (A41-A43), and the court below (A24-A25), closely examined the specific discovery requests by Laird. The Court of Appeals agreed with the Commission that the requests were overly broad and that Laird failed to provide any justification (even in his Brief to that court) for the requests. *Id.*

Laird also offered no evidentiary support for his position that an oral hearing was required. (A26). Essentially, the record is devoid of any basis to conclude that the Commission abused its discretion in finding, pursuant to 49 C. F. R. § 1100.43, that all important issues of mate-

rial fact could be resolved by means of written materials.

Additionally, Laird ignores that he was liberally accommodated by the Commission in his procedural requests, which were numerous. Specifically, the Commission considered his discovery requests, despite the fact that they were not timely filed. (A40-A41). The Commission required the production of certain documents by Kidder, permitted Laird to serve interrogatories on a Kidder Vice President and extended the time for the filing of verified statements. (A43). Laird was subsequently permitted yet another extension of time within which to file his Verified Statement (Jt. App. 189a), and he was also permitted to file a further pleading, a "Counter-Reply", by the Commission's final Decision. (A2).

Finally, Laird suggests that, if the transaction was at issue in a lawsuit as opposed to in an administrative proceeding, he would be entitled to the extensive discovery which he sought before the Commission. (A18-A19). Of course, this matter *was* considered by an administrative agency and not a judicial body, pursuant to an Act of Congress. The treatment Laird's discovery requests might have received in a judicial context, involving other substantive and procedural standards, is obviously irrelevant to whether this Court should review this case.¹⁰

To reiterate, there is no special or important reason for this Court to review again Petitioner's procedural challenges, which were well considered by the court below.

10. It is, however, certainly doubtful that a court would countenance the sort of "fishing expedition" proposed by Laird, any more than the Commission did. (A42).

CONCLUSION

For the foregoing reasons, no special or important federal question warranting this Court's review is posed by this case. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

Statutes and Regulations

49 U.S.C. § 11301(d)(1) provides:

49 § 11301

(d)(1) The Commission may begin a proceeding under this section on application of a carrier. Before taking final action, the Commission must investigate the purpose and use of the securities issue or assumption and the proceeds from it. The Commission may approve any part of the application and may require the carrier to comply with appropriate conditions. After an application is approved under this section, the Commission may change a condition previously imposed or use that may be made of the securities or proceeds for good cause shown subject to the requirements of this section. The Commission may approve an application under this section only when it finds that the securities issue or assumption—

(A) is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose;

(B) is compatible with the public interest;

(C) is appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier; and

(D) will not impair the financial ability of the carrier to provide the service.

(A1)

49 C.F.R. § 1100.43 provides:

§ 1100.43 Modified procedure, how initiated. (Rule 43)

The Commission may, in its discretion, order that a proceeding be heard under modified procedure if it appears that substantially all important issues of material fact may be resolved by means of written materials and that the efficient disposition of the proceeding can be made without oral hearing.

(a) *Commission's initiative or by request.* Modified procedure (see Rule 5(j)) will be ordered in a proceeding upon the Commission's initiative or upon its approval of a request filed by any party that the modified procedure shall be observed.

(b) *Order directing Modified Procedure.* An order directing modified procedure will list the names and addresses of the persons who at that time are parties to the proceeding, and direct that they comply with the modified procedure rules. As used in Rules 47, 49, and 51 the term "complainant" shall comprehend the party having the initial duty to establish the truth of the claim or to justify the relief or authorization sought, and the term "defendant" shall comprehend the party controverting the truth of the claim or opposing the relief or authorization sought.

49 C.F.R. § 1100.51 provides:

§ 1100.51 Modified procedure; hearings. (Rule 51)

(a) *Request for cross examination or other hearing.*

If cross examination of any witness is desired the name of the witness and the subject matter of the desired cross examination shall, together with any other request for oral hearing, including the basis therefor, be stated at the end of defendant's statement or complainant's statement in reply as the case may be. Unless material facts and in dispute, oral hearing will not be held for the sole purpose of cross examination.

(b) *Hearing issues limited.* The order setting the proceeding for oral hearing if hearing is deemed necessary, will specify the matters upon which the parties are not in agreement and respecting which oral evidence is to be introduced.

49 C.F.R. § 1100.55(a) provides:

§ 1100.55 Discovery. (Rule 55)

(a) *In general.* Unless otherwise available under the Interstate Commerce Act or other applicable statutes, parties may obtain discovery pursuant to these rules (Rules 55-65, inclusive) regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in Rules 22, 23, 200, and 225, and proceedings that need not be determined on a record after hearing) provided that, discovery procedures (except for written interrogatories and requests for admissions) may be used only when the Commission, upon its own motion, or upon a verified petition filed by a party, and upon good cause shown, shall have entered an order approving such use. Such petitions, where required, must be filed in sufficient time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of any established date for hearing or for submission of initial statements under modified procedure. Likewise, the use of discovery in those circumstances in which no petition is required must be accomplished without requiring the postponement of any established date for hearing or for submission of initial statements under modified procedure. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; provided that Rules 55-65, inclusive, shall not apply to application proceedings handled pursuant to the modified procedure, except that in such proceedings on petition seeking appropriate discovery procedures may be filed.

(A4)

Missouri Annotated Statutes § 351.390 (Vernon) provides:

351.390. Corporation's powers to purchase, hold, transfer or dispose of its own shares

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares; provided, that it shall not purchase, either directly or indirectly, its own shares when its net assets are less than its stated capital, or when by so doing its net assets would be reduced below its stated capital. Notwithstanding the foregoing limitation, a corporation may purchase its own shares for the purpose of:

- (1) Eliminating fractional shares;
- (2) Collecting or compromising claims of the corporation, or securing any indebtedness to the corporation previously incurred;
- (3) Paying dissenting shareholders entitled to payment for their shares in the event of a merger or consolidation or a sale or exchange of assets;
- (4) Effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.